



Ontario, Canada

Workplace Representative Manual

(Case Management)

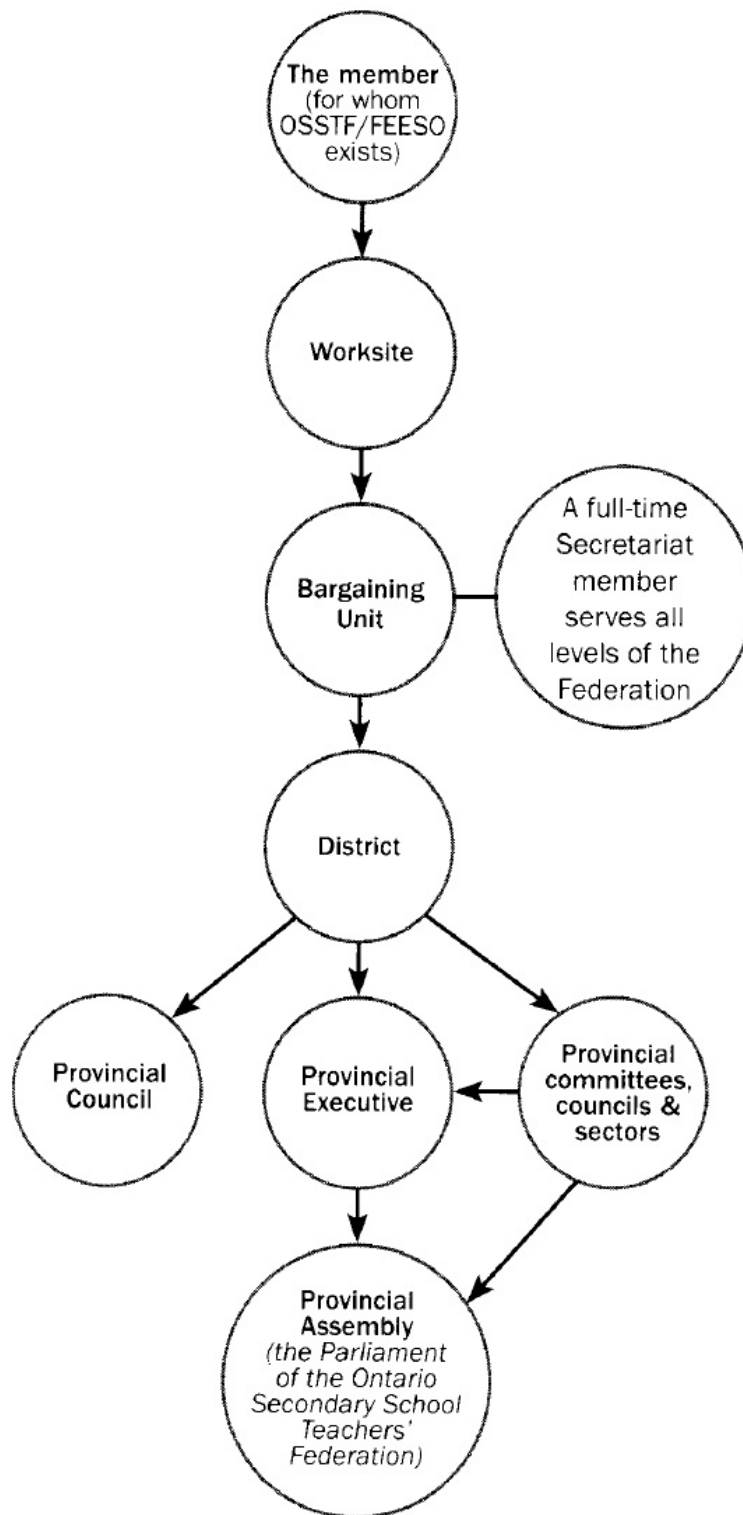
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(Parts having to do with Case Management)

OSSTF/FEESO'S ORGANIZATIONAL STRUCTURE



WHAT OSSTF/FEESO STANDS FOR

The Ontario Secondary School Teachers' Federation (OSSTF/FEESO), founded in 1919, is recognized across North America for the extent of its services and its successes in representing its members. OSSTF/FEES currently represents the following educators and educational workers in public and separate district school boards, French language public and separate district school boards, private schools, universities and agencies providing services to district school boards:

- teachers
- occasional teachers
- student support personnel such as
 - psychologists, speech/language pathologists, social workers, attendance counsellors
 - office, clerical and technical workers
 - educational assistants
 - early childhood educators
 - instructors
 - plant and support personnel
 - lunchroom supervisors
 - university support staff

THE OBJECTS OF OSSTF/FEESO

- first and foremost to protect its members, both individually and collectively in their profession, and to ensure that none of the civil, human and legal rights enjoyed by other Ontario residents shall be denied its members;
- to secure and maintain for all active members of OSSTF/FEES equal collective bargaining rights including the right to strike;
- to bargain collectively on behalf of its active members;
- to promote and advance the cause of public education;
- to promote a high standard of professional ethics and a high standard of professional competence;
- to secure for members active participation in formulating policies and practices affecting education;

- to work toward control of our professional destiny;
- to promote political action to ensure that legislation regulating educational structures and policies is in the best interests of members, public education, students and the community;
- to support and promote equal opportunity for members, employees, and students;
- to foster and promote the dignity of all persons regardless of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability;
- to associate and unite teachers and other employees of educational institutions, or agencies which provide services to educational institutions, within the Province of Ontario;
- to ensure members are treated with respect and dignity.

OSSTF/FEESO is committed to improving the conditions under which educational employees work.

WHAT OSSTF/FEESO OFFERS MEMBERS

The age old question: "What do I get for my dues?"

Advantage #1: Protection

This is the reason for the union movement. Collective bargaining and a collective agreement that is enforced by the Federation provide economic and professional protection for members.

Advantage #2: Communications

Look at the latest publications to arrive in your worksite or email: Update, Education Forum and Pension Updates. They provide a vital voice for the Federation and provide current information to all members.

Advantage #3: Voice

OSSTF/FEESO is a powerful education lobby at Queen's Park. The Federation is in direct contact with various Ministries the leaders of the opposition parties and appropriate government officials to try to ensure the economic and professional well-being of its members.

Advantage #4: Support

Certification, pensions, member counselling, professional development, legal representation and negotiations support – these are but a few of the ongoing services offered daily by OSSTF/FEESO to members across Ontario. This is the strength of OSSTF/FEESO.

Advantage #5: Advice

In every area related to your role, help and expertise are available from the secretariat, organizers and support staff at Provincial Office.

Advantage #6: Network

Crisis communication is carried out through the email, Update, the website and numerous other communication techniques that OSSTF/FEESO has established. Our Communications/ Political Action Department is in direct contact with the province's news media and arranges effective communications.

Advantage #7: Strength

OSSTF/FEESO is acknowledged to be one of the strongest educational unions in Canada. We benefit from the solid relationships we have established with other unions by belonging to the Ontario Federation of Labour and the Canadian Labour Congress.

Advantage #8: Motivation

OSSTF/FEESO provides research grants and awards to members and, through the Student Achievement Awards, to students. Another area of motivation is provided by Excellence in Education projects, designed to promote both OSSTF/FEESO and public education.

Advantage #9: Research

OSSTF/FEESO continually conducts, supports and comments on educational research.

Advantage #10: Solidarity

Members support each other through the union. The common interests and abilities of OSSTF/FEESO members make us our own best allies.

THE WORKPLACE REPRESENTATIVE SECTION I

Duties of the workplace representative **A**

Representing a member in a crisis **B**

Working with management **C**

Checklist - when a member may be the subject of an investigation or charged with an offence **D**

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A - DUTIES OF THE WORKPLACE REPRESENTATIVE

As an OSSTF/FEESO workplace representative, you are the front-line representative of your Federation colleagues. They look to you for advice and leadership. You are the main link between them and the union structure. Your actions affect their opinion of the entire union. Your willingness to help and counsel your co-workers strengthens their commitment to the union.

In the course of your term as a workplace representative, many questions are sure to arise. Your personal knowledge of your Federation and your familiarity with key publications will enable you to field most of them.

When in doubt, telephone your District or Bargaining Unit office or Provincial Office.

What makes a good OSSTF/FEESO workplace representative?

You don't have to have all the answers to be a successful workplace representative. You just need a keen interest in people and an enthusiasm for workers' ideas and programs. You should enjoy helping others and you should have the desire and initiative to look after the interests of fellow members.

IT IS ESSENTIAL NOT TO GIVE ADVICE TO A MEMBER IF YOU ARE UNCERTAIN OF ITS ACCURACY. BAD OR INCOMPLETE ADVICE MAY WELL BE EXTREMELY HARMFUL TO THE MEMBER. WHEN IN DOUBT, CONTACT THE FEDERATION.

A good representative is:

- fair, objective and professional;
- friendly and easy to talk to;
- quick in securing facts and information and able to use them effectively;
- enthusiastic about union work and able to help members to understand the Federation's work.

What should a workplace representative know?

Know your contract - The primary reason for having a union IS to bargain collectively with the employer. The contract sets out the agreement reached by the parties. In order to know if the employer is living up to the agreement, you must know what is in the agreement and you must have access to all the Information that is necessary to monitor the administration of the agreement. Contract language interpretation evolves over time as arbitrators make their rulings. Never assume that a problem cannot be addressed through a grievance under your collective agreement just because the issue is not explicitly included in your agreement. Seek advice from your Bargaining Unit grievance officer on the precise meaning of the provisions of your agreement.

Know your workplace - Develop a thorough understanding of each job class. Understand who represents the various members of the Education Team In your workplace.

Know your employer's policies - Be familiar with policies that deal with harassment, bullying, and safe work environments. Each employer has an established protocol to address such concerns. You can also learn more about these areas through Federation-sponsored workshops and materials.

Know your grievance procedure - The grievance procedure is the heart of your collective agreement. Contract maintenance depends upon it. Employee-management relations in your workplace depend upon it. The grievance procedure likely starts with an informal stage which you may be asked to assist a member with. Know the grievance steps and be sure to keep within the time limit set for initiating a complaint.

Know the issues - The focus of an OSSTF/FEESO representative is education. In order to educate your co-workers so that they fulfill their obligations under the collective agreement and so that they carry out the policies of the Federation, you must first

educate yourself. You should attend all local Federation meetings. These meetings are held precisely to help you. They are the place to talk over problems in your workplace with other OSSTF/FEESO representatives. Go over Federation publications carefully soon after they reach you. This will help you act and speak in line with Federation policy. It will help you to answer members' questions about the Federation and other issues accurately and convincingly. Learn as much as you can about the issues which affect your workplace. You can do this through Federation-sponsored workshops and through other materials available to you through your District or Bargaining Unit office.

What should a workplace representative do?

Speak for your co-workers - Your duty is to maintain the provisions of the collective agreement and carry out the general Federation policies in dealing with management. This means you are the official spokesperson for your co-workers; you are their voice. A member who feels targeted by harassment or discrimination must be encouraged to speak out, knowing their concerns will be responded to immediately in accordance with OSSTF/FEESO policies or employer policies, if necessary. Workplace representatives should consult their Bargaining Unit president if an OSSTF/ FEESO member reports harassment or discrimination in the workplace to them.

Organize your workplace - You need the support of your co-workers. Your support is strongest when all co-workers who are Federation members know why they belong to OSSTF/FEESO and what that membership means to them. When new employees arrive at the workplace, introduce yourself and explain your role as the workplace representative. Let them know that you are there to help with any problems they may have at work. Ensure that new members receive copies of the contract and help them to understand it; give them material about OSSTF/FEESO that might assist them. Make sure they get their membership card and other OSSTF/ FEESO materials.

Keep members informed - You are responsible for keeping your co-workers informed about Federation activities, policies, and meetings. You are the link between them and the Federation. Some members will never get to the meetings. They rely on you to tell them what goes on and to explain the reasons behind the Federation's actions. Advertise Federation activities when and where possible. Some representatives organize lunch-hour discussions on Federation issues. Be sure to listen to any fresh ideas that your co-workers may have.

Get members out for meetings and elections - One of your chief duties is to get your membership out to meetings. When members attend meetings, work on committees, and help make decisions, they strengthen the Bargaining Unit. Unfortunately, members who stay away from meetings are often the ones who gripe about decisions made in their absence. If it's hard for some members to get to meetings because of work schedules, transportation, child care, or other difficulties, try to make special arrangements. If necessary, take up the matter with the Bargaining Unit office.

Assist members with personal problems - Not all the situations you face will involve the workplace. You may be the sounding board for many problems outside the workplace which directly concern co-workers' welfare. A member's ability to do the job may be jeopardized by some personal difficulty outside of work. You should get to know about services available to members with particular problems. Your District or Bargaining Unit office may be able to suggest a referral. Know where to seek help locally and provincially.

B - REPRESENTING A MEMBER IN A CRISIS

Keep calm - The circumstances under which members need and ask for Federation representation are often emotionally charged. Those involved, the director, superintendent, manager, supervisor, principal, vice-principal, teacher, educational worker, parent, or student, are likely to be angry or frightened or both. It is essential that you remain calm. Your calm attitude can help defuse the situation.

Meet privately with the member - Before any meeting with a superintendent, manager, principal or supervisor, ensure that you speak privately with the member. Explain the necessity of keeping a cool head. If the conduct or competence of the member is questioned, the member might want to "fight back on the spot." This is not a good idea. The member should be briefed in advance to listen to the "charge" and, if possible, to get it in writing and then withdraw from the meeting with you to seek further advice.

Get advice - Before attending any meeting or taking any action, call for expert advice from a place where you and the member have privacy. Call your Bargaining Unit president or your field secretary at Provincial Office. If the matter is urgent, say so. If your field secretary is not available, ask to speak to the Director of the Department or the Associate General Secretary of the Division.

Act as a witness - If allegations are being made about the conduct or competence of the member you represent, attend the meeting at which these allegations are formally brought forward. Evidence as to what was said, by whom and to whom,

may be required later. Make notes to help you remember. Keep these notes in strictest confidence. This meeting should be formal and as short as is consistent with getting all the information about the charge or complaint. This meeting is not the time or place to discuss the entire matter or to attempt to "solve the problem."

Withdraw and seek further advice - Once the complaint and the circumstances around it have been made clear to the member, you should both withdraw to get specific advice on what to do next.

Keep members' problems confidential - For the protection of all of our members, confidential matters are treated as such at all levels of the Federation and by all Federation officers.

C - WORKING WITH MANAGEMENT

Develop an effective working relationship. Meet prior to staff meetings or announcements of major decisions to advise each other of potential problems and to work co-operatively to solve or avoid conflicts. Almost everything pertaining to the working environment - staffing, organization, workload - is the legitimate business of the union.

D - CHECKLIST - WHEN A MEMBER MAY BE THE SUBJECT OF AN INVESTIGATION OR CHARGED WITH AN OFFENCE

In circumstances where a member could possibly be charged with an offence, it is very important that you act to preserve the member's rights to due process.

- Advise the member not to answer any questions from management, administrators, police, or CAS representatives before getting Federation advice.
- Terminate any meeting with management or administrators that becomes confrontational. You and the member are attending the meeting only to listen to what they have to say.
- Advise the member not to discuss the situation with colleagues and not to talk to anyone involved in making the complaint.
- Contact your Bargaining Unit President and/or Provincial Office. Provincial Office will provide assistance and representation for members in professional difficulty with an employer or external agency.
- Advise the member to maintain an accurate written record of events for the member's use only.

E - SCHOOL COUNCIL REPRESENTATIVE

The Bargaining Unit representative on a school council must be elected by members of the staff. In a secondary school, it is important that the school council representative be a member of the branch executive. Elementary school representatives should be in regular contact with their Bargaining Unit executive.

School council representatives should bring matters of Federation concern, either of a local or provincial nature, to the attention of school councils for consideration and action, if necessary.

School Council information is located on the provincial website in *myOSSTF*.

F - RUNNING A WORKSITE MEETING

Have a clear agenda and a focus for your meeting - Don't hold a meeting if it is unnecessary. Be prepared to start on time. Understand agenda topics. Give clear, brief updates on Federation activities. Have resolutions prepared and printed and sent out ahead of time with the agenda and short background papers, if possible. Finish your meetings on time. Get the minutes of the meeting out quickly to confirm decisions and content and as a reminder for action needed.

Use the rules of order to expedite the business - The chairperson's role is to get the business of the meeting done. Be fair, be firm, be consistent. Encourage membership involvement in the meeting through positive input. Do not waste time covering ground already covered. Physical arrangements for meetings are important. Make sure that lighting, ventilation, seating and refreshments are appropriate. A concise summary of the rules of order is included in the OSSTF/FEESO Handbook:

www.osstf.on.ca/about-us/constitution-bylaws-policies.aspx

GRIEVANCES SECTION II

The duty of fair representation **A**

What is a grievance? **B**

The importance of the grievance procedure **C**

The grievance procedure **D**

Discipline, grievances and just cause **E**

Following directions **F**

A - THE DUTY OF FAIR REPRESENTATION

OSSTF/FEESO has the right to bargain collectively, make trade-offs between different interests, and control access to grievance arbitration. These rights, however, are not absolute. OSSTF/FEESO must ensure all of its actions comply with the duty of fair representation. A Bargaining Unit will be considered to have acted unfairly if its decision is arbitrary, discriminatory or made in bad faith.

Most charges of a failure to provide fair representation involve an allegation that the Bargaining Unit did not refer a member's grievance to arbitration. Members do not have an absolute right to have a grievance taken to arbitration. The Bargaining Unit has the right to weigh the merits of the proposed grievance against such considerations as the cost and its potential negative implications for the Bargaining Unit as a whole.

To avoid a charge that an action was arbitrary or in bad faith, a Bargaining Unit should be able to show that an investigation of the grievor's side of the story was done, all the facts were presented to the elected decision-makers, and that there were reasons for the decision that was reached. Particular care should be taken in cases involving seniority, human rights and continued employment. Bargaining Units should ensure that their procedures do not open them to charges that their decisions were based on personal relationships or animosities. A grievor should be consulted prior to withdrawing the grievance and be given information concerning the grievance appeal procedure.

It is good practice to seek advice from your Field Secretary before determining not to file or to refer a grievance to arbitration.

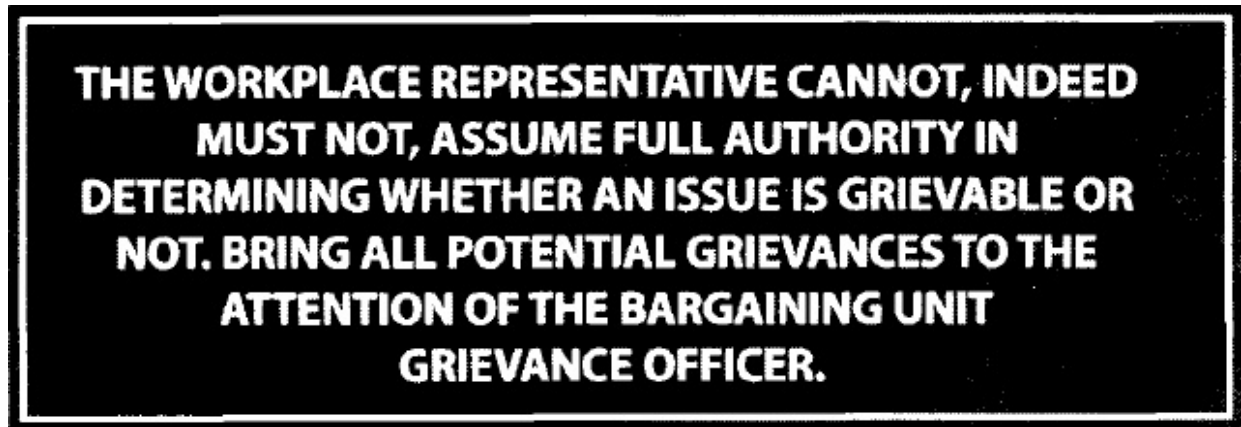
B - WHAT IS A GRIEVANCE?

As an OSSTF/FEESO workplace representative, you will hear many problems and have many questions put to you by your co-workers. Some of these will be legitimate grievances, some will be borderline, and others will be complaints that may be addressed in the next round of collective bargaining.

Ask yourself: Has management

- violated the collective agreement?
- violated a law?
- acted unfairly or committed a violation of individual or human rights?

If you answer "yes" to anyone of the above questions, there may be a legitimate grievance.



C - THE IMPORTANCE OF THE GRIEVANCE PROCEDURE

The administration of the collective agreement is the function of the employer; the policing of the administration of the agreement is the job of the Bargaining Unit. Effective contract maintenance depends on a well-informed membership which understands the provisions of the collective agreement and reports promptly to the Bargaining Unit any problems or questions regarding the administration of the agreement. It is the responsibility of the Bargaining Unit to monitor all aspects of the administration of the agreement and to challenge, through the grievance procedure, any violations of the agreement. A hard-won collective agreement can be eroded through management acts which contravene the agreement if members or the Bargaining Unit acquiesce.

If a Bargaining Unit has previously allowed a violation of the collective agreement of which it was aware or of which it should have been aware. the grievance may be lost on the grounds of estoppel. At the arbitration hearing, the employer may argue that they have interpreted the inaction of the Bargaining Unit as agreement with their practice, that they have relied on the continuation of the practice and that to change their practice will be to their detriment. For these reasons, In some circumstances, the arbitrator will rule that the Bargaining Unit does not have the right to enforce the provision of the contract. To overcome an estoppel and establish the right to enforce a provision of the collective agreement, the Bargaining Unit may inform the employer, at negotiations or by a letter, that they expect the agreement to be implemented at the next reasonable opportunity,

D - THE GRIEVANCE PROCEDURE

A grievance procedure is a mechanism for problem solving. It is designed to solve the problems that arise between employees and employers and to promote good labour relations by avoiding confrontation during the life of an agreement. Therefore, it has two distinct parts:

- i. grievance steps/meetings at which the parties may work out a mutually agreeable solution to the problem;
- ii. arbitration - the submission to a neutral third party of a problem which the parties cannot solve themselves,

All Bargaining Units have a statutory right to grieve. All members have a right to the benefits of the collective agreement. Sometimes, members will express the fear that management will see them as troublemakers if they are involved in a grievance. Sometimes, an inexperienced administrator will actually threaten to retaliate against a member who is involved in a grievance. Any sort of intimidation, real or perceived, robs the members of the benefits under the collective agreement and must be challenged. The Federation is able to make a complaint to the Ontario Labour Relations Board if any representative of an employer suggests to a member that there will be negative consequences for attempting to have the rights that are guaranteed in the collective agreement. Report any such occurrence to your Bargaining Unit president.

All differences between the parties arising from interpretation, application, administration or alleged contravention of the collective agreement may be addressed through the grievance procedure.

The grievance should include a statement of an open-ended recital of provisions of the collective agreement which have been violated and an open-ended request for remedies that are being sought.

Collective agreements usually set time limits for filing a grievance and for each step of the procedure. Depending on the contract language, failure to act within the specified time can cause the loss of the grievance,

E - DISCIPLINE, GRIEVANCES AND JUST CAUSE

Management has all these rights even if they are not spelled out in the collective agreement. If your collective agreement is silent, then the only limitation on management that will be inferred by an arbitrator is that the action must not be arbitrary, discriminatory, or in bad faith. In Ontario, at least, arbitrators will not usually stretch the point far enough to infer a duty of strict fair play. The test arbitrators will apply is: "Did management have a 'business reason' for its decision?"

Just protection in the collective agreement - Since so much power resides with management, unions have attempted to negotiate clauses into collective agreements which limit these management rights. The most common such limitation is usually called the 'just cause' provision. Just cause provisions in a collective agreement allow an arbitrator to make a decision not only about whether or not any discipline is deserved, but also about the severity of the discipline the employer has imposed. In its most frequent form, the just cause clause will say that "management has the right to discipline an employee but only for just cause."

Examples of cause disputes - A casual member who feels he/she is not being called when work is clearly available or an employee who is berated by a superior or receives a note ordering a change in attitude or behaviour, may be the recipient of discipline. Therefore, the Bargaining Unit can file a grievance alleging that the discipline is without just cause.

Burden of proof - If the action is indeed a disciplinary action, the employer is obliged to prove that there was a just cause for the action. To do this, management must prove that the employee's behaviour actually occurred and was harmful to the employer. Even where an employee has been found guilty of a serious offence in a court, arbitrators will rule that only when it is proved that the interests of the employer are damaged, can discipline be imposed.

Reasonableness of the penalty - If the arbitrator finds that some discipline is justified, then reasonableness of the penalty will be considered and a penalty of

lesser severity may be substituted depending on the individual circumstances. One of the circumstances considered is the seriousness of the offence. For example, theft from the employer may almost always be justification for dismissal whereas a single episode of lost temper may warrant suspension but not dismissal.

Progressive discipline - Arbitrators will also consider the grievor's previous disciplinary record, including any written reprimands and warnings. A few written warnings can turn a relatively minor offence into one meriting suspension. A previous suspension usually means a longer suspension or a dismissal will be upheld for a repetition of the offence. Offences such as lateness, carelessness with equipment, and insubordination are the types of offences that arbitrators take more seriously when they are repeated.

Personnel file - Because of this reliance on the theory of progressive discipline, no employee should accept discipline without consulting the Federation to determine whether it is warranted and appropriate. It is common practice for disciplinary letters to be removed from a file after an agreed upon period of time with no repeat incidents. The employee should have the assistance of the Federation in determining whether a particular written discipline should be grieved as being without just cause or in negotiating the amendment and/or removal of disciplinary entries from the member's file.

Other factors - Other considerations that may mitigate the penalty include the length of the employee's service, the presence or absence of provocation, premeditation. Remorse, mental or physical disabilities explaining the behaviour, evidence the rules were not uniformly enforced, and the seriousness of the offence.

Members should be aware that no document can be used as evidence at an arbitration hearing if the member was not given a copy at the time it was produced.

F - FOLLOWING DIRECTIONS

Generally speaking, workers are subject to a "work now, grieve later" rule. That is, under normal circumstances, workers are obliged to follow the instructions of the employer even if they disagree with that direction. There are exceptions to this rule if the instructions are to engage in an activity that is dangerous, illegal, immoral or could lead to legal liability. Workplace representatives should consult with the local Federation Office or Provincial Office prior to advising members to refuse instructions.